

**Representing Yourself
in Your Appeal
before the
Administrative Hearing
Commission**



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INTRODUCTION

The Administrative Hearing Commission (abbreviated AHC) has prepared this pamphlet to answer some of the questions you might have regarding your case. Be sure to read this and the copy of the laws and rules which accompany this pamphlet. It is important to remember that the information presented is general and is intended to cover the usual situation. The explanations in this pamphlet do not cover all of the possible situations that may arise in a case and do not cover all of the rules and laws that might apply.

1. SHOULD I HAVE AN ATTORNEY REPRESENT ME BEFORE THE AHC?

No, there is no requirement for you to hire an attorney if you are representing only yourself, or representing a business which you own or are a partner in and which is not a corporation. However, you cannot represent other people and you cannot represent any business which is incorporated (even if you are the only shareholder) without being an attorney.

Even if you are not required to hire an attorney, you may prefer to employ an attorney depending upon the nature of your case, the amount of time you can personally devote to preparation and how much is involved in the final outcome. You should know that people who represent themselves are generally at a disadvantage when the other side is represented by an attorney. The choice is yours.

Is the problem that you cannot afford an attorney or that the amount of money in dispute is far less than what the attorney's fee would be? While the AHC cannot provide a free attorney for you, there are laws that allow you, if you win your case, to obtain money to pay all or part of your attorney's fees and certain other expenses. Actually, these laws can apply whether or not you can afford an attorney. Section 136.315 of the 1986 Revised Statutes of Missouri allows this in cases involving income taxes and sales and use taxes. The provisions in section 536.021.8 and sections 536.085 and 536.087, located in the 1989 supplement to the Revised Statutes, apply to most other cases.

Copies of these laws accompany this pamphlet. When you discuss your case with an attorney be sure to show her these laws. The prospect of being able to obtain fees and expenses from the agency might enable the attorney to represent you even if you cannot pay all or part of the costs.

The information in this pamphlet will give you some assistance in handling your case on your own. However, we cannot possibly tell you everything you need to know about the law. The most important thing for you to do is read the laws and rules that accompany this pamphlet. If you have any questions please call us at 573-751-2422. We can give you information on our procedures, but we cannot give you advice on how to win your case.

2. WHAT HAPPENS NOW THAT I HAVE FILED MY COMPLAINT WITH THE AHC?

The letter or notice you sent to the AHC complaining about the state agency will now be referred to as your "complaint." You and the state agency are called "parties" to this case. You are the "petitioner" party and the state agency is the "respondent" party.

Our staff has opened an official file for your case and has given that file a name and number. In the future it will be very helpful when contacting us to refer to that case, such as John Doe v. Department of Revenue, Case No. 87-1971 RV. The file is open to the public and you can see it during business hours, Monday through Friday, 8 A.M. to 5 P.M. You can obtain copies of anything in the file but you must pay our copying cost.

We have served a copy of your complaint on the state agency involved in your dispute and have informed the agency that it has 30 days to file any response.

Any response filed by the agency could be in the form of an "answer" or a "motion." An answer will state which parts of your complaint that the agency admits to and which parts it cannot or will not admit to. If the agency admits to something, you do not need to present proof of that at the hearing. If the answer generally denies all points in your complaint or some of the major ones, it is your responsibility to prove what is stated in your com-

plaint. However, this does not apply in liquor and BNDD license cases where it is the agency's responsibility to prove the charges.

Any request made by either you or the agency for the AHC to do something in the case is called a "motion." In response to your complaint, the agency, instead of making an answer, might file a motion, such as a motion to dismiss your complaint. For instance, if the law requires you to file your complaint with the AHC within 30 days and you filed after the 30-day period passed, the agency will ask the AHC to dismiss your complaint. Dismissal of your complaint means your entire case is thrown out, and you will no longer have the opportunity to have a hearing at the AHC. In other words, you lose.

When the AHC gets a motion from the agency, the AHC will send you a letter giving you a date by which we must receive any response you have to the motion. After that date has passed, we will rule on the motion whether or not you have sent us any response. Since any motion filed by the agency may result in your losing your case if the AHC grants the agency's request, it is very important for you to read the motion as soon as you receive it and decide how you want to respond.

Is the agency taking some action against you, such as revoking a license, which you need to have stopped? You can file a written request for stay of such action. See the rule entitled "Motion for Stay" for more information.

3. WHO MAKES THE DECISIONS IN MY CASE?

An official called a commissioner acts as a judge in your case. He rules on all motions and will make the final decision as to who wins.

4. MUST I HAVE A HEARING AND WHERE WILL IT BE?

No, you need not have a hearing. Now that each party is aware of the position of the other and the agency has

an attorney assigned to your complaint, we encourage you to contact that attorney to discuss possible solutions. This can often be done, especially in tax matters, by working out a compromise. If successful, this settlement can be reduced to writing and you can dismiss your case without further expense or bother to you.

Even if no settlement can be reached, it is possible for you to enter into a stipulation with the agency. A stipulation is a document stating facts that both you and the state agency agree to. If you use a stipulation, it should cover all the important facts so that the commissioner can fairly and completely decide your case using the stipulation instead of a hearing. The stipulation must be in writing and should be signed by you and the attorney for the agency before being filed with the AHC.

If a hearing is necessary, it is usually held at the AHC, Room 640, Truman State Office Building, Jefferson City, Missouri. However, a hearing may be held in any county in the state or in the city of St. Louis, within the discretion of the commissioner after he has considered the convenience of everyone involved. If you feel there are circumstances requiring your hearing to be held somewhere other than Jefferson City, you should indicate this in writing to the Commission. The most common circumstance requiring a hearing at a location other than Jefferson City is the need to have witnesses testify who reside at that other location.

5. WHAT IF THE PRE-HEARING CONFERENCE OR THE HEARING ITSELF IS AT A TIME WHEN I CANNOT COME?

You can make a written request to have the date changed. Be sure to state why you cannot come on that date. The AHC does not often grant such requests so the reason has to be very important.

6. WHAT IS REQUIRED WHEN I WRITE TO THE AHC?

Any time you write to the AHC, state your case name and number. Also, you are required to send to the attorney for the opposing state agency a copy of anything you send to us. The attorney is required to do the same for you.

7. HOW WILL THE AHC AND THE STATE AGENCY NOTIFY ME OF WHAT IS HAPPENING IN THE CASE?

The AHC will notify you of the hearing date, of its rulings and of other matters by mail. The attorney for the state agency involved will send you by mail copies of anything she sends to the AHC. Therefore, it is **MOST IMPORTANT** to provide the AHC and the agency attorney with your current address and telephone number and to notify promptly the AHC and the agency attorney of any changes. You could lose your case if certain notices or other mailings do not get to you.

8. HOW DO I PREPARE FOR MY HEARING?

The hearing is like a trial before a judge in a regular court. The commissioner acts as the judge while you and the agency present evidence through testimony of witnesses and through exhibits such as letters or records.

CLARIFY THE ISSUES:

Pre-Hearing Conference. You should be clear about which issues and facts are in dispute. If you believe an informal meeting between you, the agency's attorney, and the commissioner will be helpful to clarify the issues in dispute, you can request in a letter that the commissioner hold a pre-hearing conference. This can be held in

the AHC office in Jefferson City or by telephone conference call. At this time you can discuss with the commissioner and the agency's attorney what will be expected of you at the hearing. The three of you can agree on the specific issues and what evidence the commissioner will expect you to present to prove your points. If you need to have witnesses or documents which are not in your possession present at the hearing, the issuance of orders called "subpoenas" to obtain their presence can be arranged. If documents are involved in your case, the commissioner can tell you at that time whether these will be acceptable at the hearing. This pre-hearing conference is also an excellent time for your complaint to be settled. Because pre-hearing conferences are usually informal, any effort to settle or any questions or advice you seek from the commissioner will not hurt your case if it does go to hearing.

PREPARE TO PROVE YOUR FACTS:

Prepare to prove at the hearing those facts stated in your complaint.

Witnesses and exhibits. Figure out which people you need to actually show up at the hearing as witnesses. Just because someone has written a letter or sworn to an affidavit does not mean that you can use the letter or affidavit at the hearing instead of having the person at the hearing. People like to try to use letters of recommendation when they have to prove good reputation or good character. You cannot do this by way of letter. You must have the witness at the hearing unless you are going to show the commissioner the witness deposition transcript (see the section below entitled, FINDING OUT WHAT THE AGENCY'S CASE IS for an explanation of a deposition) or have previous to the hearing sent his affidavit to the other side as explained further on in this pamphlet under "11. WHAT TAKES PLACE AT THE HEARING?, Can I use affidavits at the hearing"?

Before the day of the hearing, talk to any witnesses you plan to use so that there is no misunderstanding as to what they can say on the witness stand. While there are

exceptions, the general rule is that witnesses can testify only on matters of which they have first-hand knowledge. For example, a witness usually cannot testify as to what a third party told the witness. This is hearsay and generally not acceptable at a hearing. An important exception to this is when you have to prove you have a good reputation. Then your witness can testify to what your reputation (which is what others say about you) is.

If you want to introduce letters or other documents, you usually have to have the person who wrote the document as a witness to identify the document. If the document is from an employee of the state agency, however, you probably can get the agency's attorney to agree that the document is genuine without calling a witness. Call or write the attorney before the day of the hearing to see if she will do this.

Whatever your evidence is, if you think that it may not be legally admissible – but you have no other way to prove your point – offer it into evidence anyway. The worst that will happen is that, if the agency objects, the Commissioner may not let you put that evidence on.

Subpoenas – The way to get your witness to the hearing. Make sure your witnesses know the time, date and place of the hearing. You may want to have the AHC issue written orders to any or all of your witnesses requiring them to come to the hearing. This is particularly useful if the witness is not “friendly” to you or does not want to testify. These written orders are called “subpoenas.” You can also obtain orders (called “subpoena duces tecum”) requiring a person to bring things such as records to the hearing. Subpoenas can be served on anyone in Missouri whether he or she is a “friendly” witness or not; this includes people who work for the agency you are complaining about. If you want subpoenas, call or write the AHC to get one. Get them WELL IN ADVANCE of the hearing so that you have time to have them delivered to the witnesses.

You or anyone who is competent as a witness can deliver the subpoena to the witness. The sheriff, coroner, marshal or any constable of the county in which the subpoena is to be delivered may also deliver the subpoena. The subpoena must be handed to or read to the witness

and not just left with someone else or at his home or office. The person who actually delivered the subpoena must sign the return of service on the back of a copy of the subpoena to show that it was delivered. If that person is not a sheriff or one of the other county officials mentioned above, he must sign the return of service as an affidavit before a notary public or another person authorized to administer oaths. You should bring that return to the hearing.

If the witness resides more than 40 miles from the hearing, then one day's witness fee and mileage reimbursement must be offered to him along with the subpoena. The witness fee is \$3 if the witness resides in the same county in which the hearing is held and \$4 if he resides in a different county. The mileage reimbursement is 7¢ per mile to and from the hearing. So, for example, if you subpoena a witness who lives in St. Louis to appear at a hearing which is 140 miles away in Jefferson City, Cole County, the subpoena must be accompanied by a check, money order or cash for the \$4 witness fee plus the \$19.60 in mileage reimbursement (7¢ times 280 miles round trip equals \$19.60).

FINDING OUT WHAT THE AGENCY'S CASE IS:

Discovery. The next thing you should do is find out what facts the agency has in its possession and what it will present at the hearing. You do this by engaging in "discovery." There are several discovery methods which you can use. The AHC uses the rules for these methods as set forth in the "Rules of Civil Procedure" adopted by our Supreme Court, a copy of which accompanies this pamphlet. Briefly, the most common methods include:

(1) sending written questions called "interrogatories" to the agency to which the agency must respond with sworn answers within 30 days (Rules of Civil Procedure 57.01);

(2) requesting from the agency documents which are in its possession to which the agency must respond within 30 days (Rules of Civil Procedure 58.01);

(3) requesting the agency to admit or deny within 30 days specific facts which you set forth in writing called a

"request for admissions" (Rule of Civil Procedure 59.01). This is a good way to find out which facts are not in dispute and which facts you will have to present evidence on. If the agency admits any of the facts you set forth in your request for admissions, you prove those facts at the hearing by introducing the admissions without having to present any other proof;

(4) taking the sworn testimony of any witness which is recorded by a stenographer called a "reporter" who will type up a transcript of the testimony. This is called a "deposition" (read Rules of Civil Procedure 57.02 to 57.09). You must give the agency attorney seven days written notice before taking the deposition so that she can come and ask questions of the witness too. You must pay the court reporter for the transcript.

If the agency objects or refuses to cooperate with any of your discovery, you must try to work out the problem with the agency. If you are unsuccessful, you may file a request (motion) with the AHC asking us to resolve the dispute (read Rule of Civil Procedure 61.01). Be sure to state that you tried to resolve the problem with the agency but were unsuccessful. These matters should be cleared up before, not at the time of, the hearing on your complaint.

9. WHAT HAPPENS IF THE AGENCY SENDS YOU DISCOVERY?

If the agency sends you interrogatories, requests for production of documents, requests for admissions or notices of deposition, your rights and responsibilities are spelled out in the Rules of Civil Procedure previously mentioned. Whether you comply with the discovery or object to it, do so in writing and do it within 30 days of the day on which the set of interrogatories or other request was mailed to you, not 30 days from the day you received them. Be particularly careful about responding to a "request for admissions." If you fail to answer or object within 30 days of the time it was mailed to you, your failure is taken as an admission of the facts set forth in the request, and you will not be allowed to introduce contrary evidence otherwise at the hearing. In other

words, you could well lose your case if you ignore any discovery request and particularly if you ignore a request for admissions.

10. WHAT HAPPENS IF THE AGENCY SENDS YOU A MOTION FOR DETERMINATION ON THE PLEADINGS OR A MOTION FOR SUMMARY DETERMINATION?

The AHC will send you a letter after such a motion is filed by the agency telling you how much time you have to send in a written argument against the motion. Since the granting of such a motion could mean that YOU LOSE, be sure to read the motions right away. You can request a hearing on these motions which may be held by a conference telephone call including you, the agency attorney and the commissioner.

11. WHAT TAKES PLACE AT THE HEARING?

In most cases, you are expected to appear and prove your case based upon evidence admitted at the hearing and also respond to the evidence presented by the agency.

The hearing is more formal than the pre-hearing conference and resembles a trial in a courtroom except that there is no jury. However, every effort will be made by the commissioner to assist you with the procedure you are to follow. All witnesses will be sworn and their testimony taken down by the AHC hearing reporter. The evidence received at the hearing will be the sole basis for the decision.

Who goes first? In most cases, since you are the petitioner, you have the responsibility to present evidence first and to convince the commissioner that you should win. This means you have the "burden of proof." The agency can present its evidence after yours. You can then put on further evidence to answer the agency's evidence. Both you and the agency can ask questions of (cross-examine) the other's witnesses.

An exception to this rule is when you are the petitioner in a case in which an agency is trying to suspend or revoke a license, such as a liquor or a BNDD license. In those cases, the agency must present its case first and convince the commissioner that the charged violations have occurred.

If you have any doubt about these matters, write the commission and ask it for an order before the hearing explaining who has the burden of proof.

Exhibits. If there are items, such as letters or records, to be admitted into evidence, please remember that these may be required to be left with the AHC. Therefore, if you have original documents that you do not want to part with, bring both the originals and copies so that the copies can be left.

Can I be a witness? Yes. If you testify, you should take the witness stand and tell your story in a simple, direct way so that the commissioner can understand just what the points of controversy are. The attorney for the agency can then ask you questions. Before you testify you, like all other witnesses, must take an oath that you will tell the truth. If you do not want to take an oath, you must affirm that you will be truthful.

Can I use affidavits at the hearing? An affidavit is a written statement which has been sworn to and signed before a notary public or other person authorized to administer oaths. If you want to introduce an affidavit from a person rather than have that person be a witness in person, you have to send a copy of the signed affidavit to the attorney for the agency before the day of the hearing. If the attorney sends you an objection to all or part of the affidavit within seven days, then you cannot use the affidavit or at least not the parts objected to. If you send the affidavit less than eight days before the hearing, the attorney may wait to enter his objection at the hearing. Therefore, it is usually best to send the attorney the copy of the affidavit earlier than eight days before the hearing so that you will know before the hearing whether you can use it or whether you will have to prove the facts in the affidavit in a different way.

Can I object to the agency's evidence? During the presentation of evidence, either side may object to the other's evidence on the basis that it does not meet the rules required for it to be considered as evidence. Normally, neither side can object just because it disagrees with the truth of what is being said. The commissioner will rule on these matters.

Written arguments after the hearing. At the end of the hearing, the commissioner will ask each side how much time it wants to submit written arguments (called “briefs”). While you have a right to submit a brief to the commissioner whether or not he asks you for one, you are not required to submit one. However, they can be helpful to the commissioner. You may also purchase a copy of the transcript of the hearing from the hearing reporter before having to write your argument so that you can review the testimony and refer the commissioner to those pages which are helpful to you. Except in extraordinary circumstances, once the hearing is adjourned you are not allowed to submit any additional evidence – only written arguments based on the evidence presented at the hearing.

How do I get the final decision? The decision rendered by the commissioner will be in writing and will set forth the facts which he found to be true and the law which is applicable to those facts. He will then explain how the law applies and what conclusions he has reached. A copy of the decision is mailed to each party.

12. DO YOU HAVE TO WAIT ALL THAT TIME AFTER THE HEARING TO GET A DECISION?

No. If the other side agrees, both of you can waive your right to submit written arguments and to receive the written findings of fact and conclusions of law which the commissioner is normally required to issue. There are two ways to get a quicker ruling.

The first way is for the parties, no less than five days before the hearing, to request that the commissioner make an oral ruling at the end of the hearing. The commissioner will simply announce his decision and need not provide any explanation as to how or why he reached that result.

The second way is for both parties to request a “memorandum decision.” This request can be made at any time before a formal decision is issued. Once the request is made, the commissioner must render the memorandum decision within one week of the hearing or of the request, whichever is later. This decision is in writing, states the

decision of the commissioner and summarizes his legal reasoning. Consult the AHC's Rules on how to make these requests. Requests for either type of decision must be accompanied by written arguments.

13. DO I HAVE THE RIGHT TO APPEAL IF THE AHC RULES AGAINST ME?

Yes, normally appeals must be filed with the correct court within 30 days of the date of the AHC decision. Which court you must appeal to and how the appeal must be taken depends on the kind of case you have. You should consult an attorney or read the statutes yourself to find out as quickly as possible after the AHC decision has been issued. Once the 30-day period has passed, you have lost the right to appeal.

14. WHAT IF MY CASE WAS DISMISSED BECAUSE I WAS UNABLE TO APPEAR AT THE HEARING?

You have 30 days from the date of the dismissal to file with the AHC your written request to reinstate your case. You must state in writing the facts which prove that you had good cause to miss the hearing. Be sure to send us something right away. After the 30 days is up the AHC has no authority to reinstate your case. Also the 30 days which you have to appeal to a court does not stop running if you file this request. It begins running on the date of the dismissal. Therefore, to make sure you do not lose your right to appeal, you may want to file your appeal in court at the same time you file your request with the AHC to reinstate your case. If you do not file your appeal in court within that 30 days, you will have lost your right to appeal.